

City of Detroit

CITY COUNCIL

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TO: Honorable City Council

FROM: David Whitaker, Director
Research & Analysis Division (RAD) Staff

DATE: June 24, 2009

**RE: GDRRA AND SOLID WASTE MANAGEMENT IN
DETROIT AFTER JULY 1, 2009**

GDRRA's June 18 Board Meeting

On Thursday, June 18, 2009, RAD staff attended the board meeting of the Greater Detroit Resource Recovery Authority (GDRRA). Based on the letter from Mr. Prymack to waste management contract Proposers, dated March 13, 2009, it was RAD staff's understanding that "The public opening of proposals and formal award [for solid waste management after July 1] w[ould] be made by the Authority Board at its June 17, 2009 meeting." [rescheduled to June 18]

However, that public opening and formal award did not occur. The GDRRA board took the following actions at their June 18 meeting:

1. Named new officers: Chair Charles Beckham; Vice Chair Alfred Jordan; Secretary Treasurer Pam Scales
2. Scheduled meetings for the coming year, every other month on the third Wednesday of the month (anticipating increased activity for the next six months)
3. Ratified a letter agreement for a 2008/09 audit with PriceWaterhouseCoopers
4. Approved the 2009/10 budget
5. Approved a number of contracts on a month-to-month basis, in light of uncertainty surrounding the Resource Recover Facility (RRF) incinerator; these contractors include: Miller Canfield law firm, Weston Solutions on-site

engineering consultants, Recycle Here curbside collection pilot programs, and Waste Management for disposal of recyclables collected by Recycle Here

GDRRA'S Motion Approving Covanta's Acquisition of an Interest in the RRF

The apparently most significant action item on the agenda of this meeting was number 2E, a ***“Resolution Consenting to Acquisition by Covanta Projects, Inc. of Undivided Interest in Detroit Resource Recovery Facility on Certain Conditions.”*** Ms. Van Dusen of the Miller Canfield law firm, counsel to GDRRA, verbally outlined the situation and summarized the proposed resolution. At the meeting, non-Board members present were not provided with a copy of the resolution. The motion passed unanimously.

RAD was subsequently provided with a copy of the four-page resolution, which is attached. To summarize its key points:

- The Operating Agreement and the Leases pertaining to the RRF expire July 1, 2009.
- The City is obligated to deliver all its solid waste to GDRRA until October 1, 2021, unless the Ground Sublease between GDRRA and the Owners terminates prior to that date.
- The Owners have the right to compel GDRRA to continue to deliver solid waste to the RRF after July 1, 2009, if the Owners match GDRRA's alternative cost of disposal (\$25 per ton), and if there is no lease for the RRF.
- Covanta has requested GDRRA's consent to purchase the undivided interest in the RRF of one of the Owners, Aircraft Services Corp.
- If GDRRA does not consent, such a sale to Covanta could occur without GDRRA's consent after July 1, 2009.
- In consideration for GDRRA's consent, Covanta has agreed to provide GDRRA with an option to purchase Covanta's interest in the RRF.
- Detroit Thermal has indicated to GDRRA that it cannot sustain operations supplying steam to the downtown steam loop, if it is required to produce its own steam without using the RRF to do so.
- Continuing to supply waste to the RRF “also enhances the possibility of securing the release of the funds held in the Detroit Edison escrow to” GDRRA, “and reduces the risk of a claim for liquidated damages from the” Owners.
- GDRRA's consent to Covanta's purchase of a 30% ownership interest in the facility is based on the following conditions:

- GDRRA agrees to deliver solid waste to the RRF from July 1, 2009 through June 30, 2010, at a cost of \$25 per ton (Covanta to pay the costs of transport and ash disposal). [P. 3, Sec. 1(a)]
- Covanta will agree to sell its interest in the RRF to GDRRA in the future, at the same price it paid, "plus the cost of capital improvements to the" RRF, as approved by GDRRA. [P. 3, Sec. 1(b)]
- GDRRA will agree to enter into an operating agreement with Covanta for a five year period commencing July 1, 2010, or later if GDRRA acquires a majority interest in the RRF, conditioned on matching the alternative disposal price, and on terms that are otherwise satisfactory to GDRRA. [P. 3, Sec. 1(c)]
- GDRRA "is either compensated for or retain [sic] title to the post incineration metal recovery system which "GDRRA installed at the RRF, and the rolling stock used there. [P. 3, Sec. 1(d)]
- Covanta agrees to cooperate with GDRRA's effort to obtain the release of funds accumulating through June 30, 2009 and the escrow under the energy purchase agreement between Michigan Waste Energy and Detroit Edison. [P. 3, Sec. 1(e)]
- In the event that the RRF shuts down for any reason on or before July 1, 2009, including failure to reach agreement with Covanta or Covanta's failure to acquire an interest in the RRF, GDRRA will contract with Waste Management for solid waste disposal on a month-to-month basis, until other long-term disposal arrangements can be made.

Ms. Van Dusen further stated "No one in 1991 could have predicted that events would unfold in this way." Mr. Prymack followed Ms. Van Dusen's outline of the motion by stating "This is important because this is June 18. We haven't received the call [from the Owners or Covanta] yet, and don't know if Covanta will reach agreement with the Owners by July 1." GDRRA expected to receive further information forthwith, and RAD has requested that such information be forwarded to RAD and City Council. (see attached letter to GDRRA dated June 22, 2009)

Additional Discussion

During the public comment period, in response to questions, Mr. Beckham stated "Mayor Bing is committed to straightening this all out." He said "We'll be down there [in the Council chambers] to talk about this." He stated that GDRRA's action at this meeting, regarding Covanta's acquisition of an interest in the RRF, would "not impact" the question of how GDRRA and the City could be contractually bound to continue to incinerate solid waste, when neither Covanta nor the Owners has submitted a competitive

bid at this late date.¹ He agreed that the administration should develop a comprehensive solid waste management program, and sought more time to do so, because Mayor Bing has only been in office for a little over a month.

Current Status

GDRRA has stated that they expect to hear from the Owners imminently. RAD has requested further information from GDRRA, regarding the anticipated bid by the Owners, and regarding the June 18 approval of Covanta's acquisition of an interest in the RRF.

On June 16, 2009, Your Honorable Body passed a Resolution in support of the most economical and environmentally sound solid waste management system for the City. That resolution included the requirement that GDRRA and the administration afford full transparency, and a clear and understandable explanation of GDRRA's and the Administration's plans and vision for managing the City of Detroit's municipal solid waste.

In particular, Council resolved that GDRRA and the Administration should identify the contractor they choose for managing the City of Detroit's MSW after June 30, 2009, and submit the relevant information about the contract, bids, acceptance, and implementation to City Council by no later than June 23, 2009, to ensure that Council has enough time to ask potential questions, analyze the subsequent answers and otherwise complete its due diligence review of the proposed contract; and that any bid submitted by Covanta should be evaluated equally, in scope and breadth of services, to the other submitted bids for the usage of landfills.

As RAD has observed in previous reports on this issue over the last year, the absence of any active involvement of attorneys from the Law Department, representing the interests of the City of Detroit and its people in a transaction of this complexity, size and importance, continues to be a concern.

In light of the short time lines involved at this point, RAD expects to submit another Report on this Issue to Your Honorable Body within approximately one week or less, unless we receive no further information in this time period.

¹ This statement seems to be directly contradicted by the explicit conditions in the resolution, at P. 3, Sec. 1(a) and (c), that GDRRA has agreed to continue to deliver waste to the RRF until June 30, 2010, followed by entering into a new 5 year operating agreement with Covanta. As noted, the written resolution itself was not made available to RAD staff at the meeting itself, when Mr. Beckham made this statement.

**RESOLUTION CONSENTING TO ACQUISITION
BY COVANTA PROJECTS, INC.
OF UNDIVIDED INTEREST IN
DETROIT RESOURCE RECOVERY FACILITY
ON CERTAIN CONDITIONS**

Minutes of Re-scheduled meeting of the Board of Directors (the "Board") of the Greater Detroit Resource Recovery Authority, County of Wayne, Michigan, a public body corporate and politic (the "Authority") held in the Finance Conference Room, 12th Floor, Coleman A. Young Municipal Center, Detroit, Michigan, on Thursday, the 18th day of June, 2009, which meeting was called to order by the Vice Chairman at 2:30 o'clock p.m. Eastern Daylight Time.

PRESENT Members _____

ABSENT: Members _____

Motion by: _____

Supported by: _____

W I T N E S S E T H:

WHEREAS, Second Amended and Restated Agreement for Management, Operation and Maintenance of Solid Waste Disposal Resource Recovery and Energy generating Facility in Detroit, Michigan between the Greater Detroit Resource Recovery Authority (the "Authority") and Michigan Waste Energy, Inc. (the "Operator"), dated as of December 16, 1985 and as amended and restated as of July 1, 1996 (the "Operating Agreement") and the Lease Agreements each dated October 23, 1991 between Resource Recovery Business Trust 1991-A and Resource Recovery Business Trust 1991-B, respectively, as Lessors, and Michigan Waste Energy, Inc. as Lessee, (the "Leases"), each have a term expiring July 1, 2009 and neither the Operating Agreement nor the Leases have been renewed for subsequent terms; and

WHEREAS, the City of Detroit is obligated under Section 202 of the Full Faith and Credit General and Unconditional Obligation Solid Waste Disposal Contract between the Authority and the City of Detroit ("City"), dated December 16, 1985, as amended, to deliver all Solid Waste collected by the City's Department of Public Works ("DPW") to the Authority until October 1, 2021 unless the Ground Sublease between the Authority and the owners of the Detroit Resource Recovery Facility ("Facility") terminates prior to that date; and

WHEREAS, the Authority has taken bids for hauling and disposal of the Solid Waste delivered to it by the DPW for terms commencing July 1, 2009; and

WHEREAS, beginning July 1, 2009, the DPW is engaging in a pilot recycling program for 30,000 households in the City; and the Authority will have responsibility for managing the sale or processing of recyclable materials collected through this program through a contract with Waste Management at its materials recycling facility in the City, and the Authority will continue to operate its own drop-off and mobile recycling program pursuant to a contract with Recycle Here; and

WHEREAS, their separate participation agreements the owners of the Facility have the right to compel the Authority to continue to deliver Solid Waste collected by the DPW to the Facility for disposal after July 1, 2009 if the owners agree to at least match the Authority's alternative cost of disposal and if there is no lease for the Facility; and

WHEREAS, based on the hauling and disposal bids received, the Authority's alternative cost of disposal beginning July 1 is not more than \$25 per ton of Solid Waste; and

WHEREAS, Covanta has requested the Authority's consent pursuant to the Participation Agreement dated as of September 1, 1991, among Michigan Waste Energy, Inc., the Authority, Resource Recovery Business Trust-B, Aircraft Services Corporation, Wilmington Trust Company and William J. Wade (the "Participation Agreement") to purchase the undivided interest of Aircraft Services Corporation in the Facility; and

WHEREAS, if the Authority does not consent to the transfer of Aircraft Services Corporation's interest in the Facility, such sale could occur without consent of the Authority after July 1; and

WHEREAS, in consideration for the consent of the Authority, Covanta has agreed to provide the Authority with an option to purchase Covanta's interest in the Facility, in addition to other terms described below; and

WHEREAS, the energy produced by the Facility supplies steam to Detroit Thermal, owner of the Detroit steam loop, which serves over 120 public and private buildings in the area between downtown and midtown Detroit, at a lower cost than Detroit Thermal's cost to self generate steam, and Detroit Thermal has indicated to the Authority that it cannot sustain operations if it is required to produce its own steam; and

WHEREAS, the terms of the requested consent preserve the option for the Authority and the City of Detroit to regain at least partial control of the Facility in the future, and continue to, at least in the short run, provide a reliable and lower cost source of steam to the customers of the Detroit Thermal steam loop; and

WHEREAS, continuing to supply Solid Waste to the Facility also enhances the possibility of securing the release of the funds held in the Detroit Edison escrow to the Authority and reduces the risk of a claim for liquidated damages from the owners of the Facility.

NOW, THEREFORE, be it resolved that:

1) The Authority hereby consents to the purchase by Covanta of a thirty (30%) percent undivided ownership interest in the Facility on the following conditions:

a) The Authority agrees to cause Solid Waste to be delivered to the Facility from July 1, 2009 through June 30, 2010 under a disposal agreement at a tipping fee to be paid by the Authority of not to exceed \$25 per ton. Covanta will agree to pay the cost of transporting Solid Waste from the Southfield Transfer Station to the Facility and hauling and disposal of any ash, bypass waste or other process residue.

b) Covanta will agree to sell its interest in the Facility to the Authority in the future at a price equal to the price paid by Covanta to Aircraft Services Corporation for the Trust B share, plus the cost of capital improvements to the Facility paid for by Covanta, other than annual repairs and replacements, required overhauls and replacements which are typically required to be performed on a five year cycle, and provided that Covanta provides notice of such capital improvements and documentation of the expected cost thereof and obtains the agreement of the Authority to the appropriate categorization of that cost before undertaking the improvements.

c) The Authority will agree to enter into an operating agreement with Covanta to operate the Facility for a five year period commencing July 1, 2010, or such later date as the Authority acquires a majority interest in the Facility, if the Authority purchases a majority interest in the Facility and the terms of such operating agreement and related energy sales agreements allow the Authority to continue to dispose of Solid Waste at the Facility on terms such that the aggregate of projected contracted energy and third party revenues less the cost of operation and maintenance of the Facility do not exceed the Authority's alternative cost to dispose of Solid Waste, and the substantive terms of such operating agreement are otherwise satisfactory to the Authority.

d) The Authority is either compensated for or retain title to the post incineration metal recovery system which the Authority installed at the Facility and the rolling stock used at the Facility.

e) Covanta agrees to cooperate with the Authority's effort to obtain the release to the Authority of funds accumulating through June 30, 2009 and the Exhibit H Escrow under the Energy Purchase Agreement between Michigan Waste Energy and Detroit Edison.

2) The Chairperson of the Authority is authorized to execute and deliver an agreement with Covanta documenting the agreement of Covanta to comply with the conditions described in paragraph 1, and providing the Authority's consent to Covanta's purchase of the undivided interest in the Facility.

3) In the event that the Facility shuts down on or before July 1, 2009 due to a failure to reach agreement with Covanta on the terms described in this Resolution or a failure by Covanta to acquire an interest in the Facility, or for any other reason, the Director is authorized to arrange with Waste Management to dispose of Solid Waste under an extension of the Authority's existing contract with Waste Management on a month-to-month basis until other long term disposal arrangements can be made.

4) All resolutions and parts of resolutions or other proceedings of the Authority in conflict with this Resolution are repealed and rescinded to the extent of such conflict. This Resolution shall become effective immediately upon adoption.

I hereby certify that the foregoing constitutes a true and complete copy of a Resolution duly adopted by the Board of Directors of Greater Detroit Resource Recovery Authority, at a Special Meeting held Thursday, the 18th day of June, 2009, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, that due and proper notice of the meeting as required by law was given to the Board, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

I further certify that Member _____ moved adoption of said Resolution, and that said motion was supported by Member _____.

I further certify that the following Members voted for adoption of said Resolution: _____; and
that the following Members voted against adoption of said Resolution: _____ and
that the following Members abstained from voting: _____

RESOLUTION DECLARED ADOPTED

*Greater Detroit Resource Recovery
Authority*

By _____
Its Chairperson

Secretary

Board Meeting Date: June 18, 2009

DELIB:3101220.1\035967-00097
06/16/09

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June 22, 2009

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Charles Beckham, Board Chair
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**VIA FAX (313) 876-0457 TO MR. PRYMACK
VIA HAND DELIVERY TO MR. BECKHAM**

Re: Solid Waste Management in Detroit after July 1, 2009

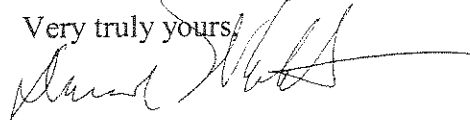
Dear Mr. Prymack and Mr. Beckham:

Following up on the GDRRA Board meeting last week, on behalf of City Council I am writing to request any further correspondence, memoranda, bids, agreements and other documents relevant to the Owners and Operator of the Resource Recovery Facility. At the June 18 GDRRA meeting, Ms. Van Dusen stated that the Owners had advised GDRRA they are preparing to send GDRRA a letter exercising their right to compel continued delivery of solid waste to the RRF, at a price matching the bid submitted by Republic Waste Services. I am now requesting any and all documentation in GDRRA's possession or control relevant to this issue. This request includes any and all written, non-privileged memoranda or motion documentation supporting the motion outlined by Ms. Van Dusen at the June 18 meeting itself, to allow the Operator Covanta to acquire an interest in the RRF.

Based on the events at GDRRA's June 18 meeting, we expect to receive further information from GDRRA in the very near future. We look forward to you advising City Council of the status of GDRRA's implementation and plans for disposal of solid waste by landfilling and/or incineration, recycling, composting, and waste reduction.

Thank you for your time and attention to this matter. If there are any questions or concerns, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "David Whitaker", with a long horizontal flourish extending to the right.

David D. Whitaker, Director
City Council Research & Analysis Division